

Application No.: 08/821,027

Docket No.: 00-VE22.04RCE1

**REMARKS**

Claims 1, 2, 5-21 and 23-30 are pending in the application. The Office Action has allowed Claims 9-21, 23, and 24. The Office Action has rejected Claims 1, 2, 5-8, and 25-30. The Office Action has objected to Claims 25-29 as containing allowable subject matter if rewritten in independent form including the limitations of the base claim and any intervening claims. By this Amendment, Applicant has amended Claims 1, 25, and the specification starting at page 17, line 24.

Entry of this Amendment is proper under 37 CFR §1.116 because this Amendment: (a) places the application in condition for allowance (for the reasons discussed herein); (b) does not raise any new issue requiring further search and/or consideration because the amendments amplify issues previously discussed throughout prosecution; (c) does not add claims without deleting an appropriate number of claims; and (d) places the application in better form for appeal, should the appeal be necessary. This Amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of this Amendment is thus respectfully requested.

**I. Formal Matters.**

1. Applicant kindly thanks the Examiner for indicating the allowance of Claims 9-21, 23, and 24.

2. Applicant kindly thanks the Examiner for indicating that Claims 25-29 contain allowable subject matter if rewritten in independent form including the limitations of independent Claim 1 and any intervening claims. In view of the clarifying amendment to independent Claim 1, Applicant respectfully submits that limitations of dependent Claim 25 read into Claim 1 are not necessary to overcome the rejections of the applied art.

3. Applicant kindly thanks the Examiner for changing the Attorney Docket Number on the cover page of the Office Action to reflect the correct Attorney Docket Number of 65632-0047, and removing the previous, incorrect attorney docket number of 680-189.

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4. Applicants have amended the paragraph of the originally-filed specification starting at page 17, line 24 by changing "*Application Serial No. 08/634,544*" to "*U.S. Patent No. 5,790,548*" at page 18, line 2 of the originally-filed specification. This amendment at page 18, line 2 was addressed by the Applicant in response to the previous non-final Office Action dated September 18, 2003. However, the amendment was not entered by the Office Action because the Applicant did not state that *the paragraph* of the specification being replaced started at page 17, line 24 of the originally-filed specification. Applicant has clarified this error and has re-presented the amendment at page 2 of this paper. Withdrawal of the objection is respectfully requested.

## II. The Claims Define Patentable Subject Matter.

1. The Office Action rejects Claims 25-29 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention. The Office Action indicated that Claim 25 included insufficient antecedent basis for "the occurrence of the routing step" limitation. Applicant has amended Claim 25 to clearly recite, "*wherein the CPR further comprising an applied operating criteria defined by a preselected condition that permits routing of said voice telephone call to occur when an acceptable quality of service is available.*"

Withdrawal of the rejection is respectfully requested. Because no art of record was applied to Claims 25-29, Applicant respectfully submits that Claims 25-29 are in allowable form.

2. The Office Action rejects Claims 1-2 and 5-8 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,026,087 to Mirashrafi et al. ("Mirashrafi") in view of U.S. 5,680,446 to Fleischer II, et al. ("Fleischer"). The rejection is respectfully traversed.

Applicant agrees with the Office Action that Mirashrafi does not disclose "*that the PSTN includes an AIN that includes an ISCP having CPRs*" (see Office Action at page 3, lines 14-15). In addition to this feature, Applicants respectfully reasserts that in order for Mirashrafi's system to operate, a caller has to make a selection at a computer through a web server as the system utilizes bridgeports and other devices to execute and monitor the quality of the packet network call. Mirashrafi's complex operation, through the utilization of bridgeports and other devices, is

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further emphasized during Mirashrafi's monitoring 'quality' of voice calls (see: col. 10, lines 30-35) by the fact that the caller is *required* to interact with the system by physically choosing a direct telephony connection when the quality level is not in an acceptable range.

As explicitly stated by Mirashrafi at col. 10, lines 49-64, "*If the measured quality level is in an acceptable range...changeover bridgeport 165 returns to step 230. Otherwise, changeover bridgeport 165 prompts the user* (i.e., the caller) *as to whether the user would like to switch to a direct telephony connection between the client computer 102 and changeover bridgeport 165, step 238...if the user responds with an election to switch to direct telephony connection, step 240, changeover bridgeport 165 causes a direct telephony connection...step 242.*" In addition to Mirashrafi's caller interaction with the system, Applicant respectfully submits that changeover bridgeport 165 *requires software* to enable direct telephony connection (see: col. 11, lines 11-40).

Conversely, Applicant has amended Independent Claim 1 to indicate that "*if said predetermined threshold level is not exceeded, transparently routing said voice telephone call to said second station through an interexchange carrier switched voice network*" (see: page 9, lines 22-25 and page 10, lines 8-11). Thus, the claimed invention clearly recites that the routing of the call is *transparent and undetectable to the caller* at the time of the call (see: page 10, lines 4-11) and does not require interaction of the caller with the system. To make up for the admitted deficiencies of Mirashrafi, the Office Action asserts that Fleischer shows that the PSTN may include AIN, ISCP, and CPRs. Applicant respectfully disagrees and submits that Fleischer does not disclose, teach, or suggest the claimed invention.

Although the Office Action has indicated that Fleischer includes CPR containing service logic for network screening and call routing at col. 13, lines 34-35, Applicant respectfully points out that the service logic, as taught by Fleischer, is software-based service logic stored in the SCP 26 (see: col. 10, lines 40-41 and col. 11, lines 2-3). At best, Fleischer appears to indicate that "*Upon receipt of a query message from the AIN SSP at end office 36, the ISCP 30 executes software based service logic programs stored in the SCP 26 to perform subscriber functions, e.g., call screening, and returns a response to the end office with call routing instructions*" (see: col. 12, lines 35-40) such as a "*trunk group number and a routing number*" (see: col. 19, lines 18-22). Thus, although it appears that Fleischer's specification indicates that the CPR contains service logic for network screen and call routing, it is the ISCP, not the CPR, that actually routes the call by returning a response to the end office with call routing instructions.

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However, if one skilled in the art were to combine the teaching of the applied art, Mirashrafi's software required by the bridgeport 165 that enables a direct telephony connection when measured quality is unacceptable would include Fleischer's service logic software that causes the ISCP to return a trunk group number and a routing number for call routing to an end office to permit call routing. Because Mirashrafi and Fleischer both require software, and, according to Mirashrafi's teaching, the caller must select the direct telephony connection, the combination teaches away from the claimed invention, which conducts transparent routing of a voice call upon determining an unacceptable quality of service. Because the combination of Mirashrafi and Fleischer does not disclose, teach, or suggest the claimed invention, and because the combination of Mirashrafi and Fleischer is completely silent to all of the claimed invention as recited in independent Claim 1, the Office Action clearly fails to establish a prima facie case of obviousness (See MPEP §2143). Withdrawal of the rejection to claims 1-2 and 5-8 is respectfully requested.

3. The Office Action rejects Claim 5 under 35 U.S.C. §103(a) as being unpatentable over Mirashrafi, in view of Fleischer, and in further view of U.S. Patent No. 5,661,792 to Akinpelu et al. ("Akinpelu"). The rejection is respectfully traversed.

For the reasons explained above in Section II, subsection 2., Applicant submits that Akinpelu does not fulfill the deficiencies of Mirashrafi and Fleischer. Thus, because the combination of Mirashrafi and Fleischer is completely silent to all of the claimed invention as recited in independent Claim 1, the Office Action clearly fails to establish a prima facie case of obviousness (See MPEP §2143). For at least this reason, Claim 5, which depends from independent Claim 1, is allowable over the applied art, taken singularly or in combination. Withdrawal of the rejection to claim 5 is respectfully requested.

4. The Office Action rejects Claim 5 under 35 U.S.C. §103(a) as being unpatentable over Mirashrafi, in view of Fleischer, and in further view of U.S. Patent No. 6,064,653 to Farris ("Farris"). The rejection is respectfully traversed.

For the reasons explained above in Section II, subsection 2., Applicant submits that Farris does not fulfill the deficiencies of Mirashrafi and Fleischer. Thus, because the combination of Mirashrafi and Fleischer is completely silent to all of the claimed invention as recited in independent Claim 1, the Office Action clearly fails to establish a prima facie case of

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obviousness (See MPEP §2143). For at least this reason, Claim 30, which depends from independent Claim 1, is allowable over the applied art, taken singularly or in combination. Withdrawal of the rejection to claim 30 is respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 07-2347, under Order No. 65632-0047 from which the undersigned is authorized to draw.

Dated: June 8, 2004

Respectfully submitted,

By 

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